

1 COOLEY LLP
2 BOBBY GHAJAR (198719)
(bghajar@cooley.com)
3 COLETTE GHAZARIAN (322235)
(cghazarian@cooley.com)
4 1333 2nd Street, Suite 400
Santa Monica, California 90401
Telephone: (310) 883-6400
5 MARK WEINSTEIN (193043)
(mweinstein@cooley.com)
6 KATHLEEN HARTNETT (314267)
(khartnett@cooley.com)
7 JUDD LAUTER (290945)
(jlauter@cooley.com)
8 ELIZABETH L. STAMESHKIN (260865)
(lstameshkin@cooley.com)
9 3175 Hanover Street
Palo Alto, CA 94304-1130
Telephone: (650) 843-5000
10 LEX LUMINA PLLC
11 MARK A. LEMLEY (155830)
(mlemley@lex-lumina.com)
12 745 Fifth Avenue, Suite 500
13 New York, NY 10151
Telephone: (646) 898-2055
14 CLEARY GOTTLIEB STEEN & HAMILTON LLP
15 ANGELA L. DUNNING (212047)
(adunning@cgsh.com)
16 1841 Page Mill Road, Suite 250
Palo Alto, CA 94304
Telephone: (650) 815-4131
17
18 *Counsel for Defendant Meta Platforms, Inc.*

FILED

Jun 24 2024

Mark B. Busby
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO

19
20 **UNITED STATES DISTRICT COURT**
21
22 **NORTHERN DISTRICT OF CALIFORNIA**
23
24 RICHARD KADREY, et al., Case No. 3:23-cv-03417-VC-TSH
25 Individual and Representative Plaintiffs,
v.
26 META PLATFORMS, INC., a Delaware
corporation;
27 Defendant.
28

**JOINT ADMINISTRATIVE MOTION TO FILE
COMBINED JOINT STATEMENT RE:
DISCOVERY DISPUTE**

Discovery Matter: Hon. Thomas S. Hixson

Trial Date: None
Date Action Filed: July 7, 2023
Current CMC Date: Oct. 20, 2023

1 Pursuant to Civil L.R. 7-11, Plaintiffs Richard Kadrey, Sarah Silverman, Christopher
 2 Golden, Michael Chabon, Ta-Nehisi Coates, Junot Diaz, Christopher Golden, Richard Greer, David
 3 Henry Hwang, Matthew Klam, Laura Lippman, Rachel Louise Snyder, Ayelet Waldman, and
 4 Jacqueline Woodson (collectively, “Plaintiffs”) and Defendant Meta Platforms, Inc. (“Meta” or
 5 “Defendant”) (collectively, “the Parties”) submit this Joint Administrative Motion (“Joint Motion”)
 6 requesting leave to file a 15-page joint statement of discovery dispute. The present dispute concerns
 7 both Meta’s motion for a protective order over certain communications as to which Meta has
 8 asserted attorney client privilege and Plaintiffs’ cross-motion to compel regarding those same
 9 communications (“Dispute”).

10 1. This Dispute concerns certain communications made by a former Meta employee
 11 on the Discord online platform (“Subject Communications”). Meta asserts the Subject
 12 Communications are protected by the attorney-client privilege, were unauthorized, and over which
 13 Meta has not waived privilege. Plaintiffs contend that the Subject Communications are not
 14 privileged and that Meta has waived any applicable privilege.

15 2. The Subject Communications were first introduced in this action—and Meta
 16 contends it first learned about them—on December 11, 2023, when Plaintiffs filed their First
 17 Consolidated Amended Complaint (ECF No. 64) (“FCAC”) on the public record, quoting from and
 18 paraphrasing some of the Subject Communications.

19 3. After Meta notified Plaintiffs of its assertion of attorney-client privilege over the
 20 portions of the Subject Communications in the FCAC, Plaintiffs stated they “disagree with Meta’s
 21 assertion . . . Plaintiffs, however, will not oppose any motion seeking to file a redacted FCAC on
 22 the public docket pending resolution of the dispute.” Subsequently, a redacted version of the FCAC
 23 was filed on the docket (ECF No. 69). The Parties also contacted the ECF clerk, who locked the
 24 originally-filed FCAC.

25 4. Thereafter, Plaintiffs sought the Subject Communications from non-party
 26 EleutherAI, which hosted the Discord channel on which the Subject Communications were made.
 27 EleutherAI and Meta have objected to that production on the basis of Meta’s assertion of attorney-
 28 client privilege. According to Plaintiffs, EleutherAI has indicated that it has the Subject

1 Communications and would be willing to produce the Subject Communications absent Meta's
 2 objections.

3 5. The Parties have since engaged in an extensive meet-and-confer process to try to
 4 resolve the Dispute. As part of that process, Meta provided a privilege log to Plaintiffs detailing
 5 which of the Discord communications are subject to Meta's privilege claim. The parties have had
 6 multiple, extensive discussions of these issues via written correspondence and on videoconference
 7 calls.

8 6. On June 11, 2024, the Parties agreed that they had reached an impasse and would
 9 require the Court's guidance to resolve the Dispute. In particular, Meta seeks a protective order to
 10 prevent Plaintiffs from obtaining the Subject Communications or using them in this litigation.
 11 Plaintiffs seek to compel production of the Subject Communications from EleutherAI.

12 7. Under Magistrate Judge Hixson's Discovery Standing Order, the Parties are required
 13 to prepare a joint statement of not more than 5 pages that presents each Party's position and final
 14 proposed compromise and may not be accompanied by exhibits or affidavits other than relevant
 15 excerpts of discovery requests and responses, privilege logs, deposition testimony, and meet and
 16 confer correspondence.

17 8. The Parties file this motion to seek the Court's leave to file a consolidated joint
 18 statement regarding the Dispute that combines the briefs for both Meta's motion for a protective order
 19 and Plaintiffs' motion to compel. Plaintiffs agreed to file a 10-page joint statement in letter format,
 20 and Meta requests that the Court grant leave to file a 15-page joint statement in letter format.
 21 Plaintiffs take no position as to Meta's request for 15 pages.

22 9. Subject to the Court's approval, the Parties have agreed to file the combined joint
 23 statement by June 28, or 3 days after issuance of the Court's order on this Joint Motion, whichever is
 24 later.

25 10. The Parties also request leave (1) for Meta to submit the Subject Communications for
 26 *in camera* review and (2) for the parties to file declarations supporting their competing positions
 27 including accompanying exhibits in support thereof on the discovery dispute. The Parties may also
 28 attach relevant portions of the EleutherAI subpoena, the privilege log Meta provided to Plaintiffs, and

1 their discovery correspondence. Plaintiffs also request leave to submit for *in camera* review the
 2 unsealed FCAC in which the Subject Communications were originally disclosed in order to provide
 3 the necessary context surrounding the Subject Communications, as well as additional exhibit(s) that
 4 Plaintiffs believe indicate the disclosure of the Subject Communications on LinkedIn.

5 11. Good cause exists for this request because the Parties' Dispute involves cross-
 6 motions on an issue that will benefit from more thorough briefing than permitted by a 5-page joint
 7 statement on each separate motion. The Parties respectfully submit that the Court's resolution of
 8 the issues presented will be facilitated both by a longer joint statement and the availability of the
 9 Subject Communications and any declarations submitted by the Parties.

10 12. For these reasons, the Parties hereby request an order (1) granting the Parties leave
 11 to present their Dispute to Magistrate Judge Hixson by filing a joint statement of 15 pages (or, at a
 12 minimum, 10 pages) in letter brief format; (2) requiring the joint statement be filed on June 28,
 13 2024 or 3 days after the Court's order this Joint Motion; (3) allowing the Parties to attach
 14 declarations supporting their competing positions as well as accompanying exhibits; and (4) allowing
 15 the Parties to submit the Subject Communications for *in camera* review by the Court.

16

17

Respectfully submitted,

18

Dated: June 21, 2024

COOLEY LLP

19

20

By: /s/ Colette Ghazarian

21

Bobby Ghajar
 Mark Weinstein
 Kathleen Hartnett
 Judd Lauter
 Elizabeth L. Stameshkin
 Colette Ghazarian

22

23

LEX LUMINA PLLC
 Mark A. Lemley

24

25

CLEARY GOTTLIEB STEEN &
 HAMILTON LLP
 Angela L. Dunning

26

27

Attorneys for Defendant
 META PLATFORMS, INC.

28

1 Dated: June 21, 2024

JOSEPH SAVERI LAW FIRM, LLP

2
3 By: /s/ Joseph R. Saveri

4 Joseph R. Saveri
5 Cadio Zirpoli
6 Christopher K.L. Young
Holden Benon
Aaron Cera

7 Matthew Butterick

8 Attorneys for Plaintiffs
9 RICHARD KADREY, SARAH
SILVERMAN, and CHRISTOPHER
GOLDEN

10
11 Dated: June 21, 2024

12 CAFFERTY CLOBES MERIWETHER &
SPRENGEL, LLP

13
14 By: /s/ Bryan L. Clobes

15 Bryan L. Clobes (*pro hac vice*)
Alexander Sweatman (*pro hac vice*)

16 VENTURA HERSYE & MULLER, LLP
17 Daniel J. Muller

18
19 Attorneys for Plaintiffs
MICHAEL, CHABON, TA-NEHISI
COATES, JUNOT DIAZ, CHRISTOPHER
GOLDEN, RICHARD GREER, DAVID
HENRY HWANG, MATTHEW KLAM,
LAURA LIPPMAN, RACHEL LOUISE
SNYDER, AYELET WALDMAN, and
JACQUELINE WOODSON

1 **[PROPOSED] ORDER**

2 PURSUANT TO THE STIPULATION, IT IS SO ORDERED:

3 1. The Parties may present their dispute to Magistrate Judge Hixson concerning Meta's
4 claim of privilege over certain communications involving a former Meta employee that took place
5 on the Discord platform by filing a joint statement of 15 pages;

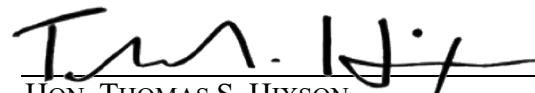
6 2. The joint statement must be filed on or before June 28, 2024, or within 3 days of the
7 date of this Order, whichever is later;

8 3. The Parties may attach declarations supporting their competing positions;

9 4. Meta shall submit the communications at issue for *in camera* review by the Court.
10 Plaintiffs may submit for *in camera* review the unredacted FCAC as well as exhibit(s) indicating the
11 continued public disclosure of the Subject Communications on LinkedIn; and

12 5. Other than the exceptions provided in this Order, the Parties are to comply with the
13 procedures outlined in Magistrate Judge Hixson's Discovery Standing Order.

14
15 Dated: June 24, 2024


16 HON. THOMAS S. HIXSON
17 UNITED STATES MAGISTRATE JUDGE

18 In camera submissions shall be emailed to TSHpo@cand.uscourts.gov

19
20
21
22
23
24
25
26
27
28

ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(h)

I hereby attest that I obtained concurrence in the filing of this document from each of the other signatories. I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 21, 2024

COOLEY LLP

/s/Colette Ghazarian

*Attorneys for Defendant
Meta Platforms, Inc.*

305043400